IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 207 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAS - Applicant(s)
Versus
EXPO PACKAGING - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question to this Court for its opinion;

> *"Whether, the Appellate Tribunal is right in law and on facts in confirming the view taken by the C.I.T. (Appeals) to the effect that when the declaration under section 10A of the Act was not filed alongwith the return, but filed during the course of assessment proceedings, the assessee was entitled to claim that the provisions of section 10A should not be made applicable?"*

2. Learned counsel for the Revenue, after taking us through the provisions of Section 10A of the Income Tax Act (as applicable), has submitted that if the declaration under the said Section is not filed along with the Return, the right to file the declaration, at a later stage during the course of the assessment proceedings, would stand lost and the assessee would not be entitled to claim that provisions of Section 10A should not be made applicable.

3. Barring reading the Section, as it is, learned counsel was unable to say that the Income Tax Act provides that if a declaration under Section 10A is not filed along with the Return, what shall be the penal consequences.

4. It cannot be disputed that filing of declaration under Section 10A is a procedural requirement and the procedural requirements, in fact, are handmaids to assist us in reaching a proper conclusion.

5. From the order passed by the Tribunal it appears that, it placed its strong reliance upon the judgment in the matter between *Commissioner of Income Tax Vs. Gujarat Oil And Allied Industries, 201 ITR Page 325*, where a Division Bench of this Court was concerned with Section 80-J of the Act. According to Section 80J, the requirement was that, audit report should be filed along with the Return. In that case also, the audit reports were filed during the process of the assessment and an objection was raised by the Revenue that subsequent to filing of the Return the audit reports could not be filed. The Division Bench held that the requirement was procedural and was only directory and was not a condition

precedent or a mandatory requirement. The Division Bench held that the filing of the audit reports after Return was submitted but before assessment was framed, tantamount to sufficient compliance of the provisions of law.

6. In relation to filing of the documents under Section 80-J, if it is held that the requirement is procedural and not mandatory, and would not lead to penal consequences, then yet another requirement under Section 10A of the Act which also is procedural cannot be taken to be mandatory as it is procedural and helps and assists the Income Tax Officer/Assessing Officer to reach to a positive conclusion it cannot be taken to be a mandatory requirement.

7. The Tribunal was justified in holding that the requirement is not mandatory and filing of a declaration under Section 10A of the Act, subsequent to filing of the Return, but before the assessment is finally done, would be sufficient compliance.

8. The Reference is answered accordingly against the interests of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.